

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GRACE ALBANESE,

Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

Case No. 2:17-cv-01287-JCM-PAL

**REPORT OF FINDINGS AND
RECOMMENDATION**

(IFP Application – ECF No. 1)

This matter is before the court on Plaintiff Grace Albanese’s Application to Proceed *In Forma Pauperis* (ECF No. 1) pursuant to 28 U.S.C. § 1915 and LSR 1-1 of the Local Rules of Practice. This Application is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and LR IB 1-3 and 1-4 of the Local Rules of Practice.

I. IN FORMA PAUPERIS APPLICATION

Ms. Albanese is proceeding in this action *pro se*, which means that she is not represented by an attorney. *See* LSR 2-1. She has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis* (“IFP”), meaning without prepaying the filing fees, and submitted a proposed complaint. Pursuant to 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a filing fee and administrative fee totaling \$400 is required to commence a civil action in a federal district court. The court may authorize a person to commence an action without the prepayment of fees and costs if the person files an IFP application including an affidavit stating that he or she is unable to pay the initial fees. *See* 28 U.S.C. § 1915(a)(1); LSR 1-1. However, the court must apply “even-handed care” to ensure that “federal funds are not squandered to underwrite, at public expense, either frivolous claims” or the colorable claims of a plaintiff “who is financially able, in whole or in material part, to pull his own oar.” *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984)

(collecting cases). A “district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.” *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting *Tripati v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987)). A complaint that “merely repeats pending or previously litigated claims” is frivolous. *See, e.g., Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citation omitted); *see also Denton v. Hernandez*, 504 U.S. 25, 30 (1992); *Martinez v. Bureau of Immigration & Customs Enf’t*, 316 F. App’x 640, 641 (9th Cir. 2009).

Since March 2016, Ms. Albanese has filed 45 federal cases in the District of Nevada, 42 of which are currently ongoing and 13 of which are pending before the undersigned magistrate judge.¹ In all, she has sued the Las Vegas Metropolitan Police Department (“LVMPD”) 30 times in just over a year. Most of Albanese’s actions assert the same or very similar allegations: various persons

¹ *See Albanese v. Fed. Bureau of Investigations*, 2:16-cv-00529-KJD-NJK; *Albanese v. Transp. Security Admin.*, 2:16-cv-00530-GMN-CWH; *Albanese v. Homeland Security*, 2:16-cv-00531-RFB-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:16-cv-00532-RFB-GWF; *Albanese v. Regional Transp. Comm’n of So. Nev.*, 2:16-cv-01882-APG-PAL; *Albanese v. Las Vegas Metro Police Dep’t*, 2:17-cv-00577-GMN-PAL; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01087-GMN-GWF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01284-MMD-NJK; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01285-JCM-VCF, *appeal docketed*, No. 17-16127 (9th Cir. May 31, 2017); *Albanese v. Fed. Bureau of Investigations*, 2:17-cv-01286-JAD-PAL; *Albanese v. Dep’t of Homeland Security*, 2:17-cv-01287-JCM-PAL; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01520-JAD-CWH; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01544-RFB-PAL; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01573-JCM-GWF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01574-RFB-PAL; *Albanese v. Fed. Bureau of Investigations*, 2:17-cv-01599-JAD-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01600-JAD-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01613-APG-PAL; *Albanese v. Fed. Bureau of Investigations*, 2:17-cv-01614-JAD-PAL; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01633-JAD-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01634-RFB-CWH; *Albanese v. Fed. Bureau of Investigations*, 2:17-cv-01635-JAD-CWH; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01640-MMD-VCF; *Albanese v. Fed. Bureau of Investigations*, 2:17-cv-01641-JAD-GWF; *Albanese v. Homeland Security*, 2:17-cv-01642-RFB-GWF; *Albanese v. Fed. Bureau of Investigations*, 2:17-cv-01662-JAD-NJK; *Albanese v. Homeland Security*, 2:17-cv-01663-JCM-NJK; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01664-JCM-GWF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01735-JCM-PAL; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01780-JCM-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01782-JCM-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01795-JAD-GWF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01807-JCM-GWF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01808-APG-GWF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01832-KJD-PAL; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01852-JCM-GWF; *Albanese v. Fed. Bureau of Investigations*, 2:17-cv-01871-JAD-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01872-RFB-VCF; *Albanese v. Homeland Security*, 2:17-cv-01874-RFB-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01896-JCM-VCF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01903-MMD-GWF; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01904-JCM-PAL; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01972-JAD-NJK; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01973-RFB-PAL; *Albanese v. Las Vegas Metro. Police Dep’t*, 2:17-cv-01974-JAD-PAL.

1 stalk or spy on Albanese in her bedroom and when she travels around Las Vegas, sometimes using
 2 listening devices or hacking into her phone, but federal and state law enforcement officers ignore
 3 her requests for help and refuse to investigate or arrest the wrongdoers. She asserts similar legal
 4 claims in all her cases pursuant to 42 U.S.C. § 1983: violations of her due process, equal protection,
 5 and free speech rights, obstruction of justice, defamation, public corruption, and conspiracy.

6 Ms. Albanese has been warned by the undersigned as well as Magistrate Judge Cam
 7 Ferenbach that duplicative lawsuits with virtually identical causes of action are subject to dismissal
 8 under 28 U.S.C § 1915. *See Albanese v. Fed. Bureau of Investigations*, 2:17-cv-01599-JAD-VCF,
 9 June 19, 2017 Report & Recommendation (ECF No. 3); *Albanese v. Las Vegas Metro Police*
 10 *Dep't*, 2:17-cv-00577-GMN-PAL, June 30, 2017 Report & Recommendation (ECF No. 68).
 11 Additionally, Judge Ferenbach has recommended that she be declared a vexatious litigant and be
 12 prohibited from filing any complaint, petition, or other document without first obtaining leave
 13 from the Chief Judge. His report and recommendation is currently pending before United States
 14 District Court Judge Jennifer A. Dorsey.

15 Having reviewed her complaint in this case, the court finds that her claims are frivolous
 16 and duplicative and will recommend denial of her IFP application and dismissal of the complaint.

17 **II. SCREENING THE COMPLAINT**

18 **A. Legal Standard**

19 Pursuant to § 1915(e), federal courts must screen all IFP complaints prior to a responsive
 20 pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (§ 1915(e) applies to “all
 21 in forma pauperis complaints”). Allegations in a *pro se* complaint are held to less stringent
 22 standards than formal pleading drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007);
 23 *Hebbe v. Pliler*, 627 F.3d 338, 342 n.7 (9th Cir. 2010). However, *pro se* litigants “should not be
 24 treated more favorably than parties with attorneys of record,” *Jacobsen v. Filler*, 790 F.2d 1362,
 25 1364 (9th Cir. 1986); rather, they must follow the same rules of procedure that govern other
 26 litigants. *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995).

27 Federal courts are required to dismiss an IFP action if the complaint fails to state a claim
 28 upon which relief may be granted, is legally “frivolous or malicious,” or seeks monetary relief

from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint may be characterized as malicious “when it is ‘filed with the intention or desire to harm another.’” *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (quoting *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005)). Allegations are frivolous when they are “clearly baseless” or lack an arguable basis in law and fact. *Denton*, 504 U.S. at 32; *see also Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolous claims include those based on legal conclusions that are untenable (*e.g.*, claims against defendants who are immune from suit or claims of infringement of a legal interest that clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.*, fantastic or delusional scenarios). *Neitzke*, 490 U.S. at 327–28; *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991); *Andrews*, 398 F.3d at 1121. In determining whether a complaint is frivolous and therefore warrants complete or partial dismissal, a court is not bound “to accept without question the truth of the plaintiff’s allegations.” *Denton*, 504 U.S. at 32. A complaint may be dismissed as frivolous if it “merely repeats pending or previously litigated claims.” *Cato*, 70 F.3d at 1105 n.2 (citation omitted); *see also Aziz v. Burrows*, 976 F.2d 1158, 1158 (8th Cir. 1992) (“district courts may dismiss a duplicative complaint raising issues directly related to issues in another pending action brought by the same party”); *Adams v. Cal. Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (“Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.”), *overruled in part on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008); *McWilliams v. State of Colorado*, 121 F.3d 573, 574 (11th Cir. 1997) (holding that repetitious action may be dismissed as frivolous or malicious).

B. Ms. Albanese’s Duplicative Factual Allegations and Claims for Relief

The court finds that the complaint in this case is frivolous because it merely repeats claims pending in other cases. Here, Albanese is suing the Department of Homeland Security for, among other things, violation of her due process and equal protection rights under 42 U.S.C. § 1983. She alleges that officers

Den[ied] me equal protection under the law by not informing that 1107 E. Desert Inn #3 and 9 are observing me in my room. Obstruction of justice by not informing any law enforcement that I am being observed in my room and listening device is

1 being used by Apts 3 and 9 to spy on me. Not informing me Apt 3 has hacked into
my phone”

2 Compl. (ECF No. 1-1).

3 In *Albanese v. Federal Bureau of Investigations*, 2:17-cv-01286-JAD-PAL, Albanese sued
4 the FBI under § 1983 for, among other things, violating her civil rights by denying her equal
5 protection, and obstruction of justice. *Id.*, Compl. (ECF No. 1-1). The complaint alleges in its
6 entirety:

7 Complaint: Denying me equal protection under the law by not informing me that
8 1107 E. Desert Inn Apts 3 and 9 are observing me in my room. Obstruction of
9 justice by not informing any law enforcement that I am being observed in my room
and listening device is used by Apts. 3 and 9 to spy on me. Violating my 4, 5, 9,
14th and privacy rights. \$500,000.00 demand.

10 *Id.*

11 In *Albanese v. Federal Bureau Of Investigation*, 2:17-cv-01614-JAD-PAL, Albanese sued
12 the FBI under § 1983 for violating her civil rights by denying her equal protection, and obstruction
13 of justice. *Id.*, Compl. (ECF No. 1-1). The complaint alleges the following:

14 Allowing people to stalk me on a daily basis in violation of my equal protection.
15 Allowing people to inform on me to people who are funding and supporting
16 someone who stalks me on a daily basis allowing obstruction of the law to aid in
stalking to continue.

17 *Id.*

18 In *Albanese v. Federal Bureau of Investigations*, 2:17-cv-01635-JAD-CWH, Albanese
19 sued the FBI under § 1983 for violating her civil rights by denying her due process and equal
20 protection, and obstruction of justice. *Id.*, Compl. (ECF No. 1-1). Her complaint alleges:

21 The F.B.I. refuse to help me when they know I’m being followed by the same man
22 who is being supported and funded by people who want me to move. The F.B.I.
23 refuse to help me when I am being stalked and they know by whom. The F.B.I.
refuses to pull the plug on 1107 E. Desert Inn Apts 3 and 9 observation of me in
24 my room. The F.B.I. know I’m being stalked and they won’t help me. This is
obstruction of justice, denying me due process and equal protection.

25 *Id.*

26 In *Albanese v. Federal Bureau of Investigations*, 2:17-cv-01641-JAD-GWF, Albanese
27 sued the FBI under § 1983 for violating her civil rights by denying her due process and equal

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1 protection, and obstruction of justice. *Id.*, Compl. (ECF No. 1-1). The complaint in that case states
 2 in its entirety the following:

3 The F.B.I. are aware that 1107 E. Desert Inn Apts 3 and 9 are observing me in my
 4 bedroom and on June 13 Desert Parkway Behavioral Hospital CNA's were waiting
 5 for me while seeing my image live streamed on their phones. June 12 1089 E.
 Desert Inn Apts 7 was live streamed my image when he stalked me. The F.B.I. is
 acting in collusion with Apts 3 and 9 who are com[m]itting criminal misconduct.

6 *Id.* See also *Albanese v. Las Vegas Metro. Police Dep't*, 2:17-cv-01640-MMD-VCF, Compl. (ECF
 7 No. 1-1) ("Las Vegas Police Department 311 / 911 Heather 10183 and so many others are
 8 obstructing justice by saying I'm not being stalked June 13 at Desert Parkway Behavioral Hospital.
 9 1107 E. Desert Inn Apts 3 and 9 are live streaming my image to Desert Parkway & June 12 to
 10 1089 E. Desert Inn #7 when they stalked me. I call 311 / 911 and they act naive and act like F.B.I.
 11 C.I.A. & homeland security by saying they know no stalking is taking place."); *Albanese v. Las*
 12 *Vegas Metro. Police Dep't*, 2:17-cv-01285-JCM-VCF, Compl. (ECF No. 1-1) ("Denying me equal
 13 protection under the law by not informing me 1107 E-Desert Inn # 3 and 9 are observing me in my
 14 room. And that listening device is being use by them to spy on me. Obstruction of justice by not
 15 informing law enforcement that Apts. 3 and 9 are observing me in my room and that Apt 3 has
 16 hacked into my phone"), *appeal docketed*, No. 17-16127 (9th Cir. May 31, 2017); *Albanese v. Las*
 17 *Vegas Metro. Police Dep't*, 2:17-cv-01904-JCM-PAL, Compl. (ECF No. 1-1) ("So it's like a
 18 vicious circle. I keep being stalked (with police foreknowledge). I call the cops. The police keep
 19 defending Apts. 3 and 9 who harass me. I keep suing.")

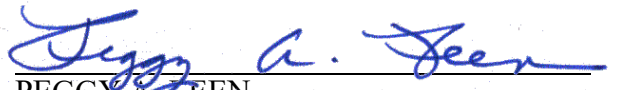
20 Here, the court finds that Albanese's complaint is duplicative and frivolous as it merely
 21 repeats pending or previously litigated claims. These actions follow a distinct pattern, which
 22 Albanese herself acknowledges. *Id.* Ms. Albanese believes that various persons stalk or spy on
 23 her in her home and when she travels around Las Vegas. However, she alleges that federal and
 24 local law enforcement officers refuse to inform her of this or investigate and arrest her stalkers.
 25 She asserts similar legal claims in most of her cases pursuant to 42 U.S.C. § 1983: violations of
 26 her due process, equal protection, privacy and free speech rights, and obstruction of justice.
 27 Because this action is duplicative and frivolous dismissal is appropriate. See *Cato*, 70 F.3d at 1105
 28 n.2.

1 Based on the foregoing,

2 **IT IS RECOMMENDED** that:

- 3 1. Plaintiff Grace Albanese's Application to Proceed *In Forma Pauperis* (ECF No. 1) be
4 **DENIED**.
5 2. The Complaint (ECF No. 1-1) be **DISMISSED**.
6 3. The Clerk of the Court be instructed to close this case and enter judgment accordingly.

7 Dated this 24th day of July, 2017.

8 
9 PEGGY A. LEEN
10 UNITED STATES MAGISTRATE JUDGE

11 **NOTICE**

12 This Report of Findings and Recommendation is submitted to the assigned district judge
13 pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for
14 the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the
15 district court's judgment. *See* Fed. R. App. P. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local Rules
16 of Practice, any party wishing to object to a magistrate judge's findings and recommendations of
17 shall file and serve *specific written objections*, together with points and authorities in support of
18 those objections, within 14 days of the date of service. *See also* 28 U.S.C. § 636(b)(1); Fed. R.
19 Civ. P. 6, 72. The document should be captioned "Objections to Magistrate Judge's Report of
20 Findings and Recommendation," and it is subject to the page limitations found in LR 7-3(b). The
21 parties are advised that failure to file objections within the specified time may result in the district
22 court's acceptance of this Report of Findings and Recommendation without further review. *United*
23 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). In addition, failure to file timely
24 objections to any factual determinations by a magistrate judge may be considered a waiver of a
25 party's right to appellate review of the findings of fact in an order or judgment entered pursuant to
26 the recommendation. *See Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991); Fed. R. Civ. P.
27 72.
28